

## § 361.6

## 20 CFR Ch. II (4–1–08 Edition)

repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Board, and documented in the Board's files (4 CFR 102.2(e));

(g) Advice that the Board will accept a repayment agreement which is reasonable in view of the financial condition of the employee at that time;

(h) If there is a statutory provision for waiver, cancellation, remission or forgiveness of the debt to be collected, advice that waiver may be requested within the period and by the procedure specified and explaining the conditions under which waiver, cancellation, remission or forgiveness is granted;

(i) Advice as to the employee's right to a hearing conducted by an official arranged by the Board (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) on the Board's determination of the debt, the amount of the debt, and the percentage of disposable pay to be deducted each pay period if a petition is filed as prescribed by the Board;

(j) Advice that the timely filing of a petition for hearing or a request for waiver (if the waiver statute or regulations are not "permissive" in nature) will stay the commencement of collection proceedings;

(k) Advice that a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than sixty days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(l) Advice as to the method and time period for requesting a hearing as provided for in § 361.5 and for requesting waiver, if it is available;

(m) Advice that any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code, part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, sections 3729–3731 of title 31,

United States Code, or any other applicable statutory authority; or

(3) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code, or any other applicable statutory authority;

(n) Advice as to other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(o) Advice that unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee. Such refunds will not bear interest unless required or permitted by law.

### § 361.6 Requests for waiver or hearing.

(a) A request for waiver or for a hearing must be made in writing and received by the Chief Financial Officer no later than thirty calendar days after the notice is sent to the employee. This time limit may, at the discretion of the Chief Financial Officer, be extended if the employee can show that the delay was caused by circumstances which were beyond the employee's control or because of the employee's failure to receive notice of the time limit. Any right to waiver or to a hearing is forfeited unless the time limits set forth in this paragraph are complied with.

(b) The employee's request for a hearing must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(c) A request for a hearing under this paragraph is not a request for waiver. A request for waiver must state the basis for the request for waiver and whether a hearing is requested. If no request for a hearing is contained in the waiver request, no hearing will be provided.

(d) A hearing, if requested, will be an informal proceeding conducted by an administrative law judge or hearing official not under the control of the Board. The employee, or his/her representative, and the Board will be

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given full opportunity to present evidence, witnesses and argument.

### **§ 361.7 Written decision following a hearing.**

Within thirty days after the hearing, the administrative law judge or hearing official shall issue a written decision stating the facts evidencing the nature and origin of the alleged debt; the amount and validity of the alleged debt; and the judge or hearing official's analysis, findings and conclusions with respect to the employee's position on liability for the debt and with respect to his or her eligibility for waiver. The decision of the administrative law judge or hearing official shall be the final agency decision.

### **§ 361.8 Limitations on notice and hearing requirements.**

(a) The procedural requirements of this part are not applicable to collections which result from:

(1) An employee's election of coverage or of a change in coverage under a Federal benefits program which requires periodic deductions from pay and which cannot be placed into effect immediately because of normal processing delays; and

(2) Ministerial adjustments in pay rates or allowances which cannot be placed into effect immediately because of normal processing delays.

(b) *Limited procedures.* If the period of the normal processing delay for which the retroactive deduction must be recovered does not exceed four pay periods, the procedures provided in §§ 361.4 and 361.5 of this part shall not apply, but the Board shall in advance of the collection issue a general notice that:

(1) Because of the employee's election, future salary will be reduced to cover the period between the effective date of the election and the first regular withholding, and the employee may dispute the amount of the retroactive collection by notifying a specified office or official; or

(2) Due to a normal ministerial adjustment in pay or allowances which could not be placed into effect immediately, future salary will be reduced to cover any excess pay or allowances received by the employee, the employee may dispute the amount of the

retroactive collection by notifying a specified office or official.

(c) *Limitation on exceptions.* The exceptions described in paragraphs (a) and (b) of this section shall not include a recovery required to be made for any reason other than normal processing delays in putting the change into effect, even if the period of time for which the amounts must be retroactively withheld is less than four pay periods. Further, if normal processing delays exceed four pay periods, then the full procedures prescribed under §§ 361.4 and 361.5 of this part shall be extended to the employee.

### **§ 361.9 Exception to requirement that a hearing be offered.**

When an employee is overpaid due to the hours worked reported on the payroll exceeding the actual hours worked, no pre-offset hearing must be granted since in such cases there is no question regarding credibility and veracity. In these cases the Board will make its determination under this part based upon review of the written record.

### **§ 361.10 Written agreement to repay debt as alternative to salary offset.**

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the Board within thirty calendar days of the date of the Notice of Intent.

(b) *Board's response.* In response to timely notice by the debtor as described in paragraph (a) of this section, the Board will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Board's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination, the Board will balance the agency's interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the Board will accept a repayment agreement instead of offset only if the employee is able to establish that offset would result in